

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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|------------------------|---|----------------------|
| HERBERT COLEMAN, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. CIV-06-21-L |
| |) | |
| ERIC FRANKLIN, Warden, |) | |
| |) | |
| Respondent. |) | |

ORDER

This matter is before the court for review of the Report and Recommendation entered by United States Magistrate Judge Doyle W. Argo on January 30, 2006. Petitioner, a state prisoner appearing *pro se*, brings this action pursuant to 28 U.S.C. §2254 seeking a writ of habeas corpus. Upon initial review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Magistrate Judge recommended that the petition be dismissed upon filing.

The court file reflects that petitioner filed an objection to the Magistrate's Report and Recommendation, which the court has carefully reviewed. Petitioner asserts that equitable tolling should apply, asserting that he was not properly advised of his rights to appeal. As noted by the Magistrate Judge, however, ignorance of the law, even for an incarcerated *pro se* petitioner, generally does not excuse prompt filing. As noted in the Report and Recommendation, petitioner waited 252 days after the applicable one-year limitations period had already passed before bringing his state post-conviction application, then waited another

month to seek federal habeas corpus relief. Under the fact, the Magistrate Judge properly found that application of the doctrine of equitable tolling is not appropriate.

Accordingly, upon *de novo* review of this matter, the court finds that the Report and Recommendation of the Magistrate Judge should be and is hereby adopted in its entirety. **The petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 is DISMISSED UPON FILING. This action is DISMISSED.**

It is so ordered this 2nd day of March, 2006.



TIM LEONARD
United States District Judge